Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 77-477

JOE S. HOPPER, WARDEN,
GEORGIA STATE PRISON,
Petitioner,

v.

TYRONE BARNETT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITIONER'S REPLY BRIEF ON QUESTION OF MOOTNESS

Pursuant to the Court's request, Petitioner submits this Reply Brief on the issue of mootness in this case.

STATEMENT OF FACTS

While Respondent's case was pending in the lower federal courts, he was paroled from his sentence for armed robbery imposed in Liberty County, Georgia. Petition, Page 6, note 1; Response to Petition, Page 3, note 2. Subsequently, by order dated September 6, 1978, the Georgia Board of Pardons and Paroles discharged the Respondent from parole, with an effective date of September 1, 1978. Appendix A, Page A4.

During the pendency of Respondent's appeal to the Fifth Circuit, counsel for Petitioner Hopper, the Appellee in the Court of Appeals, had urged that the appeal be dismissed in that Court for mootness. Respondent Barnett opposed that motion on the ground that his status as a parolee precluded dismissal for mootness.[1]

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[1] Counsel for Respondent has indicated to counsel for Petitioner Hopper that he now regards the case as moot, because of Respondent's discharge from parole.

ARGUMENT

RESPONDENT'S DISCHARGE FROM PAROLE RENDERS THIS CASE MOOT. CONSIDERATION OF COLLATERAL CONSEQUENCES FLOWING FROM THE CONVICTION DOES NOT PRECLUDE DISMISSAL FOR MOOTNESS IN THIS CASE, BECAUSE RESPONDENT DID NOT CHALLENGE THE UNDERLYING CONVICTION WHICH LED TO HIS CONFINEMENT.

In the typical habeas corpus context, neither release from custody nor discharge from parole will necessarily foreclose consideration of the merits of the case on the ground of mootness. Pennsylvania v. Mimms, 434 U.S. 106, 108 n. 3 (1977); Sibron v. New York, 392 U.S. 40, 53-57 (1968); Carafas v. LaVallee, 391 U.S. 234 (1968); Jones v. Cunningham, 371 U.S. 236 (1963). Respondent Barnett, however, did not challenge his sentence itself, but attacked the unconstitutionality of the imposition of a $2,000.00 fine as a condition of probation, after the fine was not paid and he had begun to serve his sentence. Because of his discharge from parole, Respondent could not at this point receive any benefit from the relief ordered by the Court of Appeals, which declared the sentence unconstitutional and directed that it be reformed in a manner consistent with the opinion. Barnett v. Hopper, 548 F.2d 550, 554 (5th Cir. 1977).

Respondent's case thus differs from those in which the collateral consequences of a sentence already served are sufficient to prevent a determination of mootness. See, e.g., Pennsylvania v. Mimms, supra; Ginsberg v. New York, 390 U.S. 629, 634 n.2 (1968);

Sibron v. New York, supra. Respondent's conviction was not to be set aside as a result of the lower court's decision, and he would thus not be able to remove the collateral legal consequences of the conviction.

Assuming arguendo that Respondent's case was not moot as long as he remained on parole, the subsequent discharge from parole and the restoration of civil and political rights and removal of disabilities resulting from the 1973 sentence renders this case moot. Cf., North Carolina v. Rice, 404 U.S. 244, 248 (1971). Georgia is not among the jurisdictions which distinguish between sentences imposed on probation and those served in confinement, for purposes of legal disabilities. See Huff v. Anderson, 212 Ga. 32(3)(1955).

CONCLUSION

Because Respondent's discharge from parole has rendered this case moot, this Court should vacate the lower court's judgment with appropriate direction. Scarpa v. U. S. Board of Parole, 414 U.S. 809 (1973); United States v. Munsingwear, Inc., 340 U. S. 36 (1950).

Respectfully submitted,

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Executive Assistant
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APPENDIX "A"

State Board of Pardons and Paroles

JAMES T. MORRIS
Chairman

ROOM 610
800 PEACHTREE STREET
ATLANTA, GEORGIA 30308

J. O. Partain, Jr.
Member

Mrs. Mamie B. Ri
Member

Floyd Busbee
Member

Mobley Howell
Member

I, Donnie A Lee, Executive Officer for the State Board of Pardons and Paroles, do hereby certify that the attached and foregoing are true and correct copies of:

Parole Certificate effective September 24, 1976

Order of Discharge from Parole and Restoration of Civil and Political Rights effective September 1, 1978

for Tyrone F. Barnett D-14793, as appear of file and record in the offices of the State Board of Pardons and Paroles.

Donnie A Lee
Donnie A. Lee
Executive Officer

Sworn to and subscribed before
me this 14th day of November, 1978.

Paula S. Powell
Notary Public
My Commission Expires September 29, 1979

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State Board of Pardons and Paroles

ATLANTA, GEORGIA

Parole Certificate

KNOW ALL MEN BY THESE PRESENTS:

It having been made to appear to the Georgia State Board of Pardons and Paroles that

BARNETT, TYRONE F., Serial No. **D-14793**,

convicted of the following offense(s) in the court(s) indicated:

ARMED ROBBERY **LIBERTY COUNTY SUPERIOR COURT**

is eligible to be PAROLED, and that there is a reasonable probability that said prisoner WILL REMAIN AT LIBERTY WITHOUT VIOLATING THE LAWS, and it being the opinion of the said State Board of Pardons and Paroles that the release of this prisoner is not incompatible with the welfare of society, and it appearing further that the Board is satisfied this prisoner will be suitably employed in self-sustaining employment or will not become a public charge on release:

It is therefore ORDERED that said prisoner be paroled effective **24th** day of **September**, 19**76** pending good behavior under supervision subject to the specific conditions of parole as listed on the reverse side of this Order, until the expiration of his maximum sentence, minus good time earned.

This parole shall not prevent the delivery of the prisoner to authorities of the Federal Government or any State otherwise entitled to his custody.

In witness whereof this Certificate bearing the Seal of the State Board of Pardons and Paroles is issued the **10th** day of **September**, 19**76**.

STATE BOARD OF PARDONS AND PAROLES
CECIL C. McCALL, CHAIRMAN
J. O. PARTAIN, JR., MEMBER
MRS. MAMIE B. REESE, MEMBER
JAMES T. MORRIS, MEMBER
FLOYD BUSBEE, MEMBER

Order No. **36,173**

FOR THE BOARD:
B. Young
B. YOUNG

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[illegible]

1. I will report immediately upon arrival at my destination to my Parole Supervisor, either by mail, telephone or personal visit, [illegible] Notice of Arrival form.

Your Parole Supervisor's name and address:

Mr. [illegible] Tisdale, [illegible] Officer
Adult Parole Supervision, Potomac Building North
614 H Street, N.W., Washington, D.C.

2. I will, between the first and fifth days of each month, make a full and truthful written report to my Parole Supervisor on the form provided for that purpose.
3. I will not change my residence or employment or leave the state without first getting permission from my Parole Supervisor. I also understand that should I fail to keep my Parole Supervisor informed as to my residence and employment my parole may be revoked and a warrant issued for my arrest.
4. I hereby waive all extradition rights and process and agree to return to Georgia from any State in the United States, its territories or the District of Columbia.
5. I will not use narcotic drugs in any form unless prescribed by a physician and I will not use intoxicating beverages to excess. I will not visit places of bad reputation where disorderly conduct may occur or which are frequented by persons of ill-repute.
6. I will avoid injurious habits and I will not associate with persons of bad reputation or character.
7. I will not own, use, possess, sell or have under my control any type of deadly weapons or firearm.
8. I will not purchase or have interest in any type motor vehicle without first getting permission from my Parole Supervisor and I will not operate a motor vehicle without having a valid operator's permit.
9. I will not let my debts exceed $300.00 at any time, except where necessary for food and shelter, without first getting permission from my Parole Supervisor.
10. I will not be away from my residence of record between the hours of 12:00 midnight and 6:00 A.M. unless required to do so in connection with my employment.
11. I will conduct myself honorably in all respects, work diligently at a lawful occupation and support my dependents, if any, to the best of my ability.
12. I will not violate any law.
13. I will promptly and truthfully answer all inquiries of the State Board of Pardons and Paroles and its duly authorized representatives and carry out all instructions from them.
14. If it becomes necessary to communicate with my Parole Supervisor and he is not available, I will direct my communication to the Board's headquarters office at 800 Peachtree Street, 6th Floor, Atlanta, Georgia.

Parole Plan: Residence: **Mother: Mrs. Sallie N. Barnett, 131 57th Place, S. E., Washington, D. C.**

Employment: **Family will assist.**

SPECIAL CONDITIONS: [illegible]

BEST COPY AVAILABLE

I hereby certify that this Statement of Conditions has been read and explained to the Parolee and he has agreed to them.

This 24 day of Sept, 1976

Warden's Signature

Tyrone F Barnett
Parolee's Signature

(Give Full address where you can be reached)

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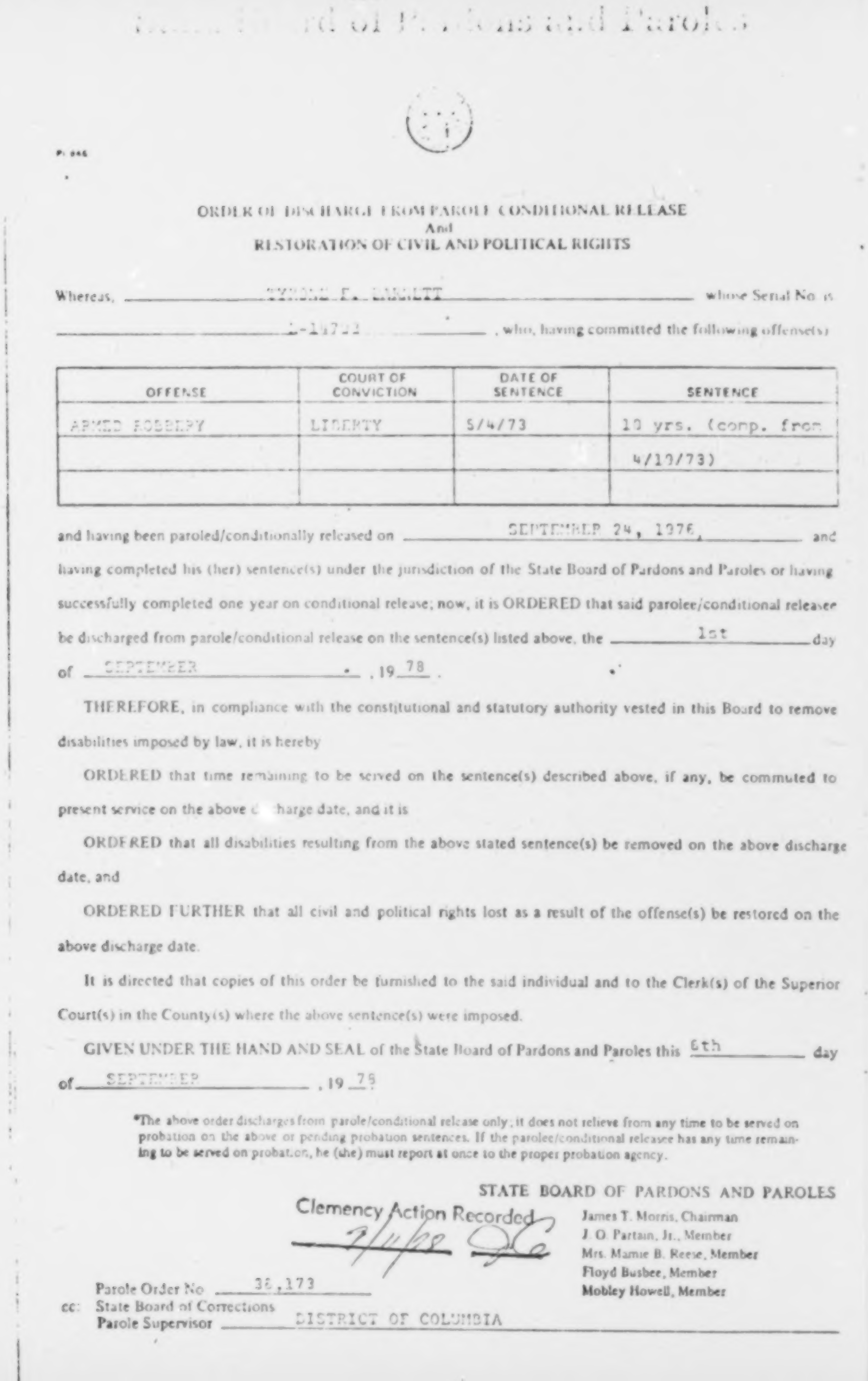

State Board of Pardons and Paroles

P. 066

ORDER OF DISCHARGE FROM PAROLE CONDITIONAL RELEASE
And
RESTORATION OF CIVIL AND POLITICAL RIGHTS

Whereas, [illegible] whose Serial No. is [illegible], who, having committed the following offense(s)

OFFENSE	COURT OF CONVICTION	DATE OF SENTENCE	SENTENCE
ARMED ROBBERY	LIBERTY	5/4/73	10 yrs. (comp. from
			4/10/73)

and having been paroled/conditionally released on SEPTEMBER 24, 1976, and having completed his (her) sentence(s) under the jurisdiction of the State Board of Pardons and Paroles or having successfully completed one year on conditional release; now, it is ORDERED that said parolee/conditional releasee be discharged from parole/conditional release on the sentence(s) listed above, the 1st day of SEPTEMBER, 19 78.

THEREFORE, in compliance with the constitutional and statutory authority vested in this Board to remove disabilities imposed by law, it is hereby

ORDERED that time remaining to be served on the sentence(s) described above, if any, be commuted to present service on the above discharge date, and it is

ORDERED that all disabilities resulting from the above stated sentence(s) be removed on the above discharge date, and

ORDERED FURTHER that all civil and political rights lost as a result of the offense(s) be restored on the above discharge date.

It is directed that copies of this order be furnished to the said individual and to the Clerk(s) of the Superior Court(s) in the County(s) where the above sentence(s) were imposed.

GIVEN UNDER THE HAND AND SEAL of the State Board of Pardons and Paroles this 6th day of SEPTEMBER, 19 78

*The above order discharges from parole/conditional release only; it does not relieve from any time to be served on probation on the above or pending probation sentences. If the parolee/conditional releasee has any time remaining to be served on probation, he (she) must report at once to the proper probation agency.

STATE BOARD OF PARDONS AND PAROLES
James T. Morris, Chairman
J. O. Partain, Jr., Member
Mrs. Mamie B. Reese, Member
Floyd Busbee, Member
Mobley Howell, Member

Clemency Action Recorded
7/11/78

Parole Order No 38,173
cc: State Board of Corrections
Parole Supervisor DISTRICT OF COLUMBIA

CERTIFICATE OF SERVICE

I, G. Stephen Parker, Attorney of Record for the Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I served three copies of the foregoing Reply Brief on the Question of Mootness upon the Respondent by depositing same in a United States mailbox, with first class postage prepaid, addressed to counsel of record as follows:

Mr. James C. Bonner, Jr., Esq.
University of Georgia
School of Law
409 North Lumpkin Street
Athens, Georgia 30601

This 21st day of November, 1978.

G. Stephen Parker
G. STEPHEN PARKER